the early quarrels of the people with the representatives of the home government and the Revolution. His aim is merely to give a faithful account of these controversies so as to enable us to see what state of things really preceded the final revolt. If studies of this sort do nothing more, they at least correct the old view that the American Revolution turned about the patriots of Boston, Philadelphia and Richmond, and show that it was deeply rooted in the local constitutional history of every colony.

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Citizenship of the United States. By FREDERICK VAN DYNE, assistant solicitor of the Department of State of the United States. Rochester, N.Y., The Lawyers' Coöperative Publishing Company, 1904. — xxvii, 385 pp.

Das amerikanische Bürgerrecht. Von BURT ESTES HOWARD. Staats und völkerrechtliche Abhandlungen, herausgegeben von Georg Jellinek und Georg Meyer, Band IV, Heft 3. Leipzig, Duncker und Humblot, 1904. — x, 155 pp.

If Mr. Van Dyne had something of Mr. Howard's constructive bent and courage in generalizing, or if Mr. Howard had Mr. Van Dyne's extensive and accurate knowledge of judicial and administrative precedents, either of them might have produced a very satisfactory treatise on the acquisition and loss of United States citizenship. Mr. Van Dyne has given us a most useful collection of material. He has brought together, under each topic discussed, the laws, elucidated in some cases by the Congressional debates; the decisions of federal and state courts and of certain international arbitration commissions; the opinions of attorneys-general and the decisions of the Department of State. Apart from the fact that he has devoted sixty pages, one-fifth of his entire text, to excerpts from the majority opinions in the case of Downes *v.* Bidwell — opinions which deal with citizenship only *obiter* and which are so easily accessible that it seems needless to reprint so much of them — there is little to criticize either in his inclusions or his exclusions. He does not, however, always state clearly or arrange logically the rules which are embodied in this mass of material.

In presenting the common-law rule, reënacted in the fourteenth amendment to the Constitution, that birth in the territory of the United States establishes citizenship, Mr. Van Dyne does not indicate in any one place just what exceptions are contained in the clause "subject to

the jurisdiction" of the United States. In describing the legislation which has regulated the status of the foreign-born children of American citizens, he concludes with the assertion, for which no authority is cited, that the persons who thereby acquire American citizenship are natural born citizens of the United States. This proposition has been the subject of too much controversy and the opposing arguments are too strong to justify so unqualified a statement. Until the question is decided by the Supreme Court, it will be an open one. In dealing with cases of dual citizenship resulting from conflicts of *jus soli* and *jus sanguinis*, Mr. Van Dyne declares that "such conflicts are not resolved by a resort to the principles of international law" (page 25). By this he probably means only that international law does not determine nationality. If, however, he intends to question the assertion repeatedly advanced by our State Department — that international law accords to the *sujet mixte*, when he attains majority, a right to elect a single nationality — his position is well taken. The principle of election is, as Mr. Van Dyne remarks, "recognized by a large number of states," but it is not yet a principle of international law. The only rule of international law in this matter is that each state to which the *sujet mixte* owes allegiance is entitled to enforce its own laws within its own jurisdiction. The theory of election was never brought into this class of cases, either in European or in American diplomacy, until in the administration of President Buchanan our State Department began to claim a right to protect naturalized American citizens against the governments to which their original allegiance was due. Having taken this position, it began to apply the doctrine of election to cases where a dual allegiance existed at birth. Secretary Hay has returned to the older and sounder view, not merely in the case of those who have dual nationality by birth but also in the case of naturalized citizens who are still claimed as subjects by their original sovereigns. He wrote in 1900:

> In international law the status of such persons comes under the doctrine of dual allegiance, each government claiming and exacting the allegiance of its naturals [nationals?] within its own jurisdiction and each being incapable of enforcing its own municipal law of citizenship within the jurisdiction of the other [page 301].

In discussing expatriation, Mr. Van Dyne points out (as several of our Presidents have pointed out, in fruitless appeals to Congress for legislation) that although in 1868 Congress declared expatriation to be a "natural and inherent right of all people," neither this act nor any

subsequent legislation has indicated what steps the American citizen must take to divest himself of his nationality. This statement, however, is not quite true: Congress has indicated two methods in which the American may exercise his natural and inherent right of expatriation. He may enlist in, and desert from, the military or naval service of the United States, or he may go beyond the limits of the United States with the intent to avoid a draft into the naval or military service. American citizens pursuing either of these courses "are deemed to have voluntarily relinquished and forfeited" their rights of citizenship (Revised Statutes, secs. 1996, 1998). Under our expatriation treaties, the American citizen may, of course, divest himself of his citizenship by voluntary naturalization in another country. As to other modes of expatriation, the State Department, with some slight assistance from the courts, has endeavored to fill the open places in our law by decisions granting or refusing protection. These are conveniently summarized by the author on pages 273–282.

Mr. Van Dyne's book was printed too soon to enable him to include the decision of the United States Supreme Court in the case of Isabella Gonzales — a decision which determines the political status of our insular dependents. He notes without comment the decision of the circuit court that the Porto Ricans were to be regarded as aliens. Now that the Supreme Court has affirmed the contrary, it seems necessary to admit that between citizens and aliens there is in the American empire an intermediate class of American subjects or, as the newer and gentler phrase describes them, "nationals." To this class belong also, since Congress has swept away the fiction of their tribal independence, the Indians who have not yet obtained citizenship under the acts of 1887 and 1890.

Mr. Howard's treatise is largely devoted to setting forth the rights and immunities of United States citizens, but in the opening sixty pages he deals with the acquisition and loss of citizenship. His discussion of the relation of federal and state citizenship before and since 1868 (pages 4–10) is clear and accurate; but his interpretation of the present law governing the acquisition of federal citizenship by birth (pages 11–38) is as indefensible as it is novel. He asserts that, under the proper construction of the fourteenth amendment, children born in the United States of alien parents temporarily resident therein are not citizens of the United States ; that our citizenship attaches *jure soli* only to the children of domiciled parents. He asserts also that, under the proper construction of the act of 1855, children born abroad of American parents who intend to return to the United States are natural-

born citizens of the United States, but that American citizenship is not acquired by such children when the parents are domiciled abroad. There is no warrant for these opinions in the Constitution or laws of the United States or in the decisions of the courts. The act of 1855 indeed declares that "the rights of citizenship shall not descend to children whose fathers never resided in the United States"; but this restriction does not affect the citizenship of the first generation born on foreign soil. The State Department, in its discretion, may withhold protection from the American-born father domiciled on foreign soil and from the children born to him abroad, when it is convinced that there is no intention on their part to become residents of the United States, but the State Department cannot denationalize them. As regards the fourteenth amendment, it was indeed asserted by Justice Miller in an inconsiderate dictum in the Slaughterhouse Cases, that the phrase "subject to the jurisdiction" was intended to exclude the children of aliens born in the United States, but he made no exception in favor of domiciled aliens. And while in the notable series of cases which have recognized the American citizenship of Chinese persons born in the United States, from that of Look Tin Sing (21 Fed. Rep. 905) to that of Wong Kim Ark (71 Fed. Rep. 382, 169 U.S. 649), all the persons whose American citizenship was affirmed were in fact born of parents long resident and probably domiciled in the United States, the decisions were not based on this fact; and in the case of Gee Fook Sing (7 U. S. App. 27, 49 Fed. Rep. 146), who was taken by his parents to China when three years of age, the judgment of the circuit court denying protection was indeed sustained, but this decision was put solely on the ground that birth in the United States was not proved. Mr. Howard's solution of this whole question (which is the solution adopted in the Dutch and Italian laws) has much in its favor from the point of view of legislative policy, but in the existing law of the United States it has no basis whatever.

The latter part of Mr. Howard's pamphlet, which deals with the guarantees of civil liberty in federal and state constitutions and which is largely based upon the work of Judge Cooley, will be of real value to German readers. Mr. Howard's German is clear and good, and his translations of technical English expressions are frequently very felicitous.

MUNROE SMITH.